Before The
COPYRIGHT ROYALTY TRIBUNAL
Washington, D.C. 20036

In the Matter of	)
	)
Distribution of Cable Royalty Fees	)

MEMORANDUM OF
BROADCAST MUSIC, INC.

Broadcast Music, Inc., by its attorneys, submits the following response to the directive contained in Part (2) of the Tribunal's "Cable Distribution Schedule of Proceedings":

In its directive the Tribunal requested interested parties to address the situation of those categories of claimants not fully represented by its total number of eligible claimants.

It is our understanding, as it is the Tribunal's, that most industry claimant groups do not include among their members all possible claimants in the industry. Thus, for example, the National Association of Broadcasters (NAB) has filed claims on behalf of its members. However, NAB represents only a portion of the universe of possible broadcaster claimants. Similarly, the Motion Picture Association of America represents only a portion of the television program production distribution industry. Likewise, the "Joint Sports Claimants" include only Major League Baseball, the National Basketball Association, the National Hockey League and

North American Soccer League - clearly not fully representative of televised sports in the United States.

On the other hand, virtually all authors and publishers of music are fully represented in this proceeding. Broadcast Music, Inc., and the other performing rights organizations include among their members more than 99% of all music authors and publishers in the United States. Therefore, the Tribunal's concern as to the distribution to claimants not fully representing entire groups is not directly applicable to the music claimants.

The problem, however, indirectly affects the valid claims of the music performing rights organizations. To the extent that some claimants representing only a portion of an industry receive a royalty payment based on an industry-wide claim, music performing rights organizations are unjustifiably denied their proper share of the royalty "pool".

The Copyright Act contemplates distribution of royalties on the basis of properly filed claims. Section 111(d)(4) of the Act, for example, states:

> The royalty fees shall ... be distributed to those among the ... copyright owners who claim that their works were the subject of secondary transmissions. [Emphasis Added]

In addition, Section 111(d)(5) requires, in pertinent part, that

> every person claiming to be entitled to compulsory license fees for secondary transmissions shall file a claim ... [C]laimants ... may lump their claims

> together and file them jointly or as a single claim, or may designate a common agent to receive payment on their behalf.

Thus, royalty fees deposited are to be distributed among actual claimants or their designated agents. A proper reading of the Act would prohibit claimants from receiving royalty payments for the secondary transmissions of copyright owners they do not properly represent. Distribution of an entire industry share to a claimant which represents only a portion of the industry essentially permits payment for claims never filed in clear contradiction of the Act.

As indicated, the Act contemplates a division of the royalty "pool" on the basis of valid claims of copyright ownership or agency, not the fictional claims of undesignated industry "representatives". Therefore, to the extent that some claimants do not properly represent an entire industry, and copyright owners unrepresented have not filed claims at all, the share of the "pool" representing the industry portion which has not filed claims should be distributed pro rata among all the properly filed claimants.

For example, if only 50% of the broadcasters are properly represented before the Tribunal, then 50% of the share of the "pool" applicable to broadcast claims should be redistributed to all claimants in accordance with their applicable shares. Distribution percentages determined in the first instance by the Tribunal would therefore be adjusted to account for the

portion of the "pool" which would otherwise be distributed to copyright owners which did not file claims.

Application of this adjustment will prevent overpayment to certain claimants which cannot properly claim to represent all industry copyright owners. Moreover, it will permit all valid claimants to receive a fair and proper proportion of the total distribution "pool".

Respectfully submitted,

PEABODY, RIVLIN, LAMBERT & MEYERS

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Dated:

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Memorandum of Broadcast Music, Inc. was mailed, postage prepaid, this 23rd day of May, 1980, to the following persons at their office addresses:

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